

exchanges and quoted in the OTCBB by NASD members.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for an interim period through April 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-3036 Filed 2-7-95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-20877; 812-9378]

### **Cityfed Financial Corp.; Notice of Application**

February 2, 1995.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Cityfed Financial Corp. ("Cityfed").

**RELEVANT ACT SECTIONS:** Order requested under sections 6(c) and 6(e) of the Act.

**SUMMARY OF APPLICATION:** Applicant requests an order that would exempt it from all provisions of the Act, except sections 9, 17(a) (modified as discussed herein), 17(d) (modified as discussed herein), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act and the rules thereunder until the earlier of one year from the date of the requested order or such time as Cityfed would no longer be required to register as an investment company under the Act. The requested exemption would extend an exemption originally granted until March 15, 1995.

**FILING DATE:** The application was filed on December 20, 1994.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 27, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549.

Applicant, 4 Young's Way, P.O. Box 3126, Nantucket, MA 02584.

#### **FOR FURTHER INFORMATION CONTACT:**

James M. Curtis, Senior Counsel, at (202) 942-0563, or Robert A. Robertson, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

#### **Applicant's Representations**

1. Cityfed was a savings and loan holding company that conducted its savings and loan operations through its wholly-owned subsidiary, City Federal Savings Bank ("City Federal"). City Federal was the source of substantially all of Cityfed's revenues and income. As a result of substantial losses in its mortgage banking and real estate operations, City Federal was unable to meet its regulatory capital requirements. Accordingly, on December 7, 1989, the Office of Thrift Supervision (the "OTS") placed City Federal into receivership and appointed the Resolution Trust Corporation (the "RTC") as City Federal's receiver. City Federal's deposits and substantially all of its assets and liabilities were acquired by a newly created federal mutual savings bank, City Savings Bank, F.S.B., whose deposits, assets, and liabilities in turn were acquired by City Savings, F.S.B. ("City Savings"). The OTS appointed the RTC as receiver of City Savings.

2. Once City Federal was placed into receivership, Cityfed no longer conducted savings and loan operations through any subsidiary and substantially all of its assets consisted of cash that has been invested in money market instruments with a maturity of one year or less and money market mutual funds. As of September 30, 1994, Cityfed held cash and securities of approximately \$9.03 million. Because of Cityfed's asset composition, it may be an investment company under the Act. Rule 3a-2 under the Act provides a one-year safe harbor to issuers that meet the definition of an investment company but intend to engage in a business other than investing in securities. Because of various claims against Cityfed and certain Cityfed officers and directors, Cityfed could not acquire an operating company within the one year safe harbor. The expiration of the safe harbor period necessitated the filing of an application for exemption from all provisions of the Act, with certain exceptions. In 1994, Cityfed was granted

conditional relief from all provisions of the Act until March 15, 1995.<sup>1</sup>

3. While Cityfed's board of directors has considered from time to time whether to engage in an operating business, the board has determined not to engage in an operating business at the present time because of the claims filed against Cityfed, whose liability thereunder cannot be reasonably estimated and may exceed its assets.

4. On June 2, 1994, the OTS issued a Notice of Charges and Hearing for Cease and Desist Order to Direct Restitution and Other Appropriate Relief and Notice of Assessment of Civil Money Penalties ("Notice of Charges") against Cityfed and certain current or former directors and, in some cases, officers of Cityfed and City Federal. The Notice of Charges requests that an order be entered by the Director of the OTS requiring Cityfed to make restitution, reimburse, indemnify or guarantee the OTS against loss in an amount not less than \$118.4 million, which the OTS alleges represents the regulatory capital deficiency reported by City Federal in the fall of 1989. The Notice of Charges provides that a hearing will be held before an administrative law judge on the question of whether a final cease and desist order should be issued against Cityfed. As of the date of the filing of the application, no date has been set for such hearing.

5. Also on June 2, 1994, the OTS issued a Temporary Order to Cease and Desist ("Temporary Order") against Cityfed. The Temporary Order required Cityfed to post \$9.0 million as security for the payment of the amount sought by the OTS in its Notice of Charges. Cityfed unsuccessfully petitioned the district court for an injunction against the Temporary Order. Cityfed has appealed to the Court of Appeals. On October 26, 1994, Cityfed and the OTS entered into an Escrow Agreement ("Escrow Agreement") with CoreStates Bank, N.A. ("CoreStates") pursuant to which Cityfed transferred substantially all of its assets to CoreStates for deposits into an escrow account to be maintained by CoreStates. Cityfed's assets in the escrow account continue to be invested in money market instruments with a maturity of one year or less and money market mutual funds. Withdrawals or disbursements from the escrow account are not permitted without the written authorization of the OTS, other than for (a) monthly transfer to Cityfed in the amount of \$15,000 for operating expenses, (b) the disbursement of funds

<sup>1</sup> Cityfed Financial Corp., Investment Company Act Release Nos. 20074 (Feb. 15, 1994) (notice) and 20135 (Mar. 15, 1994) (order).

on account of purchases of securities by Cityfed, and (c) the payment of the escrow fee and expenses to CoreStates. The Escrow Agreement also provides that CoreStates will restrict the escrow account in such a manner as to implement the terms of the Escrow Agreement and to prevent a change in status or function of the escrow account unless authorized by Cityfed and the OTS in writing.

6. On December 7, 1992, the RTC filed suit against Cityfed and two former officers of City Federal seeking damages of \$12 million dollars for failure to maintain the net worth of City Federal (the "First RTC Action"). In connection with this action, the RTC sought a court order to place Cityfed's assets under the control of the court. On January 5, 1993, the RTC and Cityfed entered into an agreement (the "Agreement") whereby the RTC would refrain from seeking the above order and Cityfed could continue to make payments for ordinary and reasonable business expenses and certain legal fees. In light of the filing by the OTS of the Notice of Charges on June 2, 1994, the RTC and Cityfed agreed to dismiss without prejudice the RTC's claim against Cityfed in the First RTC Action.

7. In addition, the RTC filed suit against several former directors and officers of City Federal alleging gross negligence and breach of fiduciary duty with respect to certain loans (the "Second RTC Action"). The RTC seeks in excess of \$200 million in damages. Under Cityfed's bylaws, Cityfed may be obligated to indemnify these former officers and directors and advance their legal expenses. Cityfed generally has agreed to advance expenses in connection with these requests. Because of the Temporary Order and the Escrow Agreement, however, Cityfed is not continuing to advance expenses in connection with these requests. Cityfed is unable to determine with any accuracy the extent of its liability with respect to these indemnification claims, although the amount may be material.

8. Currently, Cityfed's stock is traded sporadically in the over-the-counter market. Cityfed has one employee who is president, chief executive officer, and treasurer. Cityfed's secretary does not receive any compensation for her service. If Cityfed is unable to resolve the above claims successfully, Cityfed may seek protection from the bankruptcy courts or liquidate. Cityfed asserts that it probably will not be in a position to determine what course of action to pursue until most, if not all, of its contingent liabilities are resolved.

9. During the term of the proposed exemption, Cityfed will comply with

sections 9, 17(a), 17(d), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act and the rules thereunder, subject to the following modifications. With respect to section 17(d), Cityfed represents that it established a stock option plan when it was an operating company. Although the plan has been terminated, certain former employees of Cityfed have existing rights under the plan. Cityfed believes that the plan may be deemed a joint enterprise or other joint arrangement or profit-sharing plan within the meaning of section 17(d) and rule 17d-1 thereunder. Because the plan was adopted when Cityfed was an operating company and to the extent there are existing right under the plan, Cityfed seeks an exemption to the extent necessary from section 17(d). In addition, Cityfed may become subject to the jurisdiction of a bankruptcy court. With respect to transactions approved by the bankruptcy court, applicant requests an exemption from sections 17(a) and 17(d) as further described in condition 3 below.

#### **Applicant's Legal Analysis**

1. Section 3(a)(1) defines an investment company as any issuer of a security who "is or holds itself out as being engaged primarily \* \* \* in the business of investing, reinvesting or trading in securities." Section 3(a)(3) further defines as investment company as an issuer who is engaged in the business of investing in securities that have a value in excess of 40% of the issuer's total assets (excluding government securities and cash). Cityfed acknowledges that it may be deemed to fall within one of the Act's definitions of an investment company. Accordingly, applicant requests an exemption under sections 6(c) and 6(e) from all provisions of the Act, subject to certain exceptions.

2. In determining whether to grant an exemption for a transient investment company, the SEC considers such factors as whether the failure of the company to become primarily engaged in a non-investment business or excepted business or liquidate within one year was due to factors beyond its control; whether the company's officers and employees during that period tried, in good faith, to effect the company's investment of its assets in a non-investment business or excepted business or to cause the liquidation of the company; and whether the company invested in securities solely to preserve the value of its assets. Cityfed believes that it meets these criteria.

3. Cityfed believes that its failure to become primarily engaged in a non-investment business by March 15, 1995

is due to factors beyond its control. Because of outstanding and potential claims against Cityfed and certain of its officers and directors, Cityfed cannot acquire an operating company. Cityfed has diligently pursued its claims against others and has taken steps to determine the extent of its contingent liabilities. Since the filing of its initial application for exemptive relief under sections 6(c) and 6(e) on October 19, 1990, Cityfed has invested in money market instruments and money market mutual funds solely to preserve the value of its assets.

4. Cityfed requests an order that would exempt it from all provisions of the Act, subject to certain exemptions, until the earlier of one year from the date of any order issued on this application or such time as Cityfed would no longer be required to register as an investment company under the Act.

#### **Applicant's Conditions**

Cityfed agrees that the requested exemption will be subject to the following conditions, each of which will apply to Cityfed from the date of the order until it no longer meets the definition of an investment company or during the period of time it is exempt from registration under the Act:

1. Cityfed will not purchase or otherwise acquire any additional securities other than securities that are rated investment grade or higher by a nationally recognized statistical rating organization or, if unrated, deemed to be of comparable quality under guidelines approved by Cityfed's board of directors, subject to two exceptions:

a. Cityfed may make an equity investments in issuers that are not investment companies as defined in section 3(a) of the Act (including issuers that are not investment companies because they are covered by a specific exclusion from the definition of investment company under section 3(c) of the Act other than section 3(c)(1)) in connection with the possible acquisition of an operating business as evidenced by a resolution approved by Cityfed's board of directors; and

b. Cityfed may invest in one or more money market mutual funds that limit their investments to "Eligible Securities" within the meaning of rule 2a-7(a)(5) promulgated under the Act.

2. Cityfed's Form 10-KSB, Form 10-QSB and annual reports to shareholders will state that an exemptive order has been granted pursuant to sections 6(c) and 6(e) of the Act and that Cityfed and other persons, in their transactions and relations with Cityfed, are subject to sections 9, 17(a), 17(d), 17(e), 17(f), 36

through 45, and 47 through 51 of the Act, and the rules thereunder, as if Cityfed were a registered investment company, except insofar as permitted by the order requested hereby.

3. Notwithstanding sections 17(a) and 17(d) of the Act, an affiliated person (as defined in section 2(a)(3) of the Act) of Cityfed may engage in a transaction that otherwise would be prohibited by these sections with Cityfed:

(a) If such proposed transaction is first approved by a bankruptcy court on the basis that (i) the terms thereof, including the consideration to be paid or received, are reasonable and fair to Cityfed, and (ii) the participation of Cityfed in the proposed transaction will not be on a basis less advantageous to Cityfed than that of other participants; and

(b) In connection with each such transaction, Cityfed shall inform the bankruptcy court of (i) the identity of all of its affiliated persons who are parties to, or have a direct or indirect financial interest in, the transaction; (ii) the nature of the affiliation; and (iii) the financial interests of such persons in the transaction.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 95-3111 Filed 2-7-95; 8:45 am]

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**Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Fund American Enterprises Holdings, Inc., Common Stock, \$1.00 Par Value) File No. 1-8993**

February 2, 1995.

Fund American Enterprises Holdings, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Pacific Stock Exchange, Inc. ("PSE"). The Security will continue to be listed on the New York Stock Exchange ("NYSE").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following: (1) The average monthly volume of the Security on the PSE for the past six months has been diminutive; (2) it is difficult to justify the expense of the annual listing fee; (3) all public documents that the Company files must be filed in triplicate to the PSE, resulting in a significant amount of

labor and other expense associated with the maintenance of the PSE listing; and (4) the Company no longer has a West Coast business presence or significant ownership base which were important considerations in the original listing.

Any interested person may, on or before February 24, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 95-3110 Filed 2-7-95; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**New Route Opportunities (U.S.-Peru); Notice**

By this Notice we invite certificate applications from U.S. air carriers interested in providing combination and all-cargo services in the U.S.-Peru market.

Under the 1986 Air Transport Agreement between the United States and Peru there are no limits on the number of U.S. carriers that may be designated to provide scheduled combination or all-cargo services. The number of frequencies these carriers could operate, however, was limited to 16.5 weekly narrow body frequencies for combination services and five weekly narrow body frequencies for all-cargo services. By an Exchange of Notes on January 13, 1995, the Agreement was amended to increase the number of frequencies available to U.S. carriers for the operation of scheduled combination and all-cargo services. Under the amended Agreement, U.S. carriers may operate a maximum of 21 weekly narrow-body frequencies or their wide-body equivalent for combination services; and eight frequencies per week with narrow-body aircraft or their wide-

body equivalent for all-cargo air services, effective January 15, 1995.<sup>1</sup>

There has been no change to the route schedules. This means that designated U.S. carriers may provide combination services from the United States via intermediate points to Lima, and beyond to: La Paz, Bolivia and beyond to Asuncion, Paraguay (to be operated as one route); Santiago, Chile; and Buenos Aires, Argentina (Santiago and Buenos Aires to be served on separate flights beyond Lima).<sup>2</sup> Designated U.S. all-cargo airlines are permitted to operate between Miami and Lima via the intermediate points Panama City, Panama; Guayaquil, Ecuador; and Bogota and Cali, Colombia.<sup>3</sup>

American Airlines currently holds the 16.5 narrow-body frequencies for combination services, and Challenge Air holds the 5 weekly narrow-body frequencies for all-cargo services.<sup>4</sup> Therefore, 4.5 narrow-body combination and 3 narrow-body all-cargo frequencies are available new long-term allocations.<sup>5</sup>

Carriers interested in using these new opportunities should file certificate applications including attendant requests for frequency allocations within 14 calendar days of the date of this notice. Answers to any applications filed will be due seven calendar days thereafter; replies to any answers filed will be due within five calendar days after the answer date.

Except for the procedural dates, certificate applications should conform to Part 302, Subpart Q. Applications should be filed with the Department's Docket Section, Room PL-401, 400 Seventh Street SW., Washington, DC 20590. Further procedures for acting on the applications filed, if necessary, will

<sup>1</sup> 1.5 narrow-body aircraft (DC8, MD80, B707, B727, B737, B757 or similar aircraft) is considered equivalent to one wide-body aircraft (L1011, DC10, A300, B747SP, B767 or similar aircraft). Two narrow-body aircraft is considered equivalent to one B747-100 or similar aircraft.

<sup>2</sup> Designated U.S. carriers for combination services may operate via the following intermediate points: Panama City, Panama; Guayaquil and Quito, Ecuador; and on a blind-sector basis Bogota and Cali, Colombia.

<sup>3</sup> Service to Guayaquil, Bogota and Cali may be operated on a blind-sector basis only.

<sup>4</sup> American Airlines was awarded certificate authority to serve Peru by Order 90-5-5. It has an application pending for renewal of its certificate in Docket 48343. Challenge was granted exemption authority to serve Peru in 1987 (Order 87-2-38) and has been allocated the five available all-cargo frequencies. (See Orders 87-7-52, 89-7-42, 91-6-38 and 93-3-38.) Challenge has a pending application in Docket 50009 for renewal of its underlying authority and its frequency allocation.

<sup>5</sup> By Order 94-12-21, the Department allocated United Air Lines, Inc. the available 4.5 weekly combination frequencies on a temporary basis for the period January 15, 1995 through April 15, 1995, while we process a case for longer-term authority.